SUPREME COURT OF THE UNITED STATES.

No. ~~240.~~ 119

ANDRES PICO, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

1901

SUPREME COURT OF THE UNITED STATES.

No. 240.

ANDRES PICO, APPELLANT,

vs.

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OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CAL'A.

Be it remembered that on this twenty-second day of September, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Andres Pico, for the place named Moquelamos, was presented, and ordered to be filed and docketed with No. 357, and is as follows, to wit:

(Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *January* 22*d*, 1853.

In case No. 357, Andres Pico, for the place named "Moquelamos," the deposition of Nicolas A. Den, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, with documents marked H. J. T., Nos. 1 and 2, annexed thereto, was filed.

(Vide page 4 of this transcript.)

4 SAN FRANCISCO, *Sept.* 13, 1853.

Case No. 357 called, on motion of the counsel for the claimant, ordered to the foot of the docket.

SAN FRANCISCO, *June* 20*th*, 1854.

Case No. 357, on motion, was ordered to be placed at the foot of the calender of the 1st class cases on the trial docket.

SAN FRANCISCO, *August* 29, 1854.

Case No. 357 was submitted without argument, and taken under advisement.

SAN FRANCISCO, *October* 3*d*, 1854.

In the same case, Commissioner S. B. Farwell delivered the opinion of the board, rejecting the claim.

(Vide page 17 of this transcript.)

And the following order was made, to wit:

(Vide page 19 of this transcript.)

5 *Petition.*

To the honorable board of U. S. land commissioners for the adjudication of private land claims in California:

Your petitioner, Andres Pico, a native of Mexico, and citizen of Los Angeles, in California, respectfully represents: That in the month of May, 1844, your petitioner presented his petition to Pio Pico, then governor of California, and as such duly empowered to grant lands therein, for a grant of eleven leagues of land, substituting the tract known as Moquelemos, situate in the present county of Calaveras; that thereupon the said governor proceeded to obtain, ac-

cording to law the required information in regard to the stating of the petitioner, and the object of the petition, and on the sixth day of June, A. D. 1846, duly made to your petitioner the grant of the said land, which is herewith filed with a translation thereof.

That said grant was duly approved by the departmental assembly of California, on the fifteenth day of June, 1846.

That said land is bounded on the north by the southern shore of the
6 Moquelomos river, on the east by the sierra or range of mountains called ———, on the south by the lands of Mr. Gulnak, and on the west by the estuaries of the beach. That your petitioner therefore took possession of said land, and has continued in possession ever since, and that he knows of no conflicting claim thereto.

He therefore prays that his said claim and title to said land may be duly confirmed by your honorable board.

CLARK, TAYLOR & BECKH,
Atty's for Petitioner.

Filed in office Sept. 22d, 1852.

GEO. FISHER, *Sec'y.*

Dep. of Nicolas A. Den.

SAN FRANCISCO, *Jan'y 22d*, 1853.

On this day, before Com'r Harry J. Thornton, came Nicolas A. Den, a witness in behalf of the claimant, Andres Pico, petition No. 357, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

Questions by claimant.

7 Ques. 1st. What is your name, age, and place of residence?

Answer. My name is Nicolas A. Den; my age, forty years; and my place of residence, Santa Barbara.

Ques. 2d. Look at the documents now shown you, marked Exhibits 1 and 2, and attached to your deposition, purporting, the one to be an original grant from Pio Pico to Andres Pico of the land known as "Moquelemos;" the other the approval of said grant. State what you know concerning said documents, and whether you recognize the signatures thereto to be genuine.

Answer. I have examined the documents marked Exhibits 1 and 2 filed with this deposition. I have no doubt of their genuineness. I am well acquainted with their handwriting, of Pio Pico, and Jose Matias Moreno, having often seen them write, and state that their signatures in and upon said documents are their genuine signatures.

N. A. DEN.

Sworn and subscribed before me this 22d of Jan'y, 1853.

HARRY J. THORNTON,
Com'r, &c.

8 Service acknowledged.

R. GREENHOW,
Ass't Law Agent.

Filed in office Jan'y 22d, 1853.

GEO. FISHER, *Sec'y.*

1803-

Doc. H. J. T. No. 1, *annex'd to dep. of N. A. Den.*

Pio Pico, gobernador constitucional del departamento de Californias.

[SEAL.] Por cuanto Don Andres Pico, Mejicana de nacimiento ha pretendido p'a su beneficio personal y el de su familia el terreno conocido con el nombre de "Moquelumos" en estencion de once sitios de ganado mayor practicados previamente los diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidos a nombre de los nacion Mejicana, he venido en concederle el terreno mencionado, declarandole la propiedad de el por los presentes letras, á reserva de la aprobacion de la ex'ma asamblea departamental y bajo los condiciones siguientes.

9 1a. Será dueño en propiedad de once sitios de ganado mayor en el rio de Moquelamos que linda al norte con la orilla sur de dicho rio; al oriente con la sierra, inmediata al sur con el terreno del Señor Gulnak y al poniente con los esteros de la playa.

2a. El terreno que se le adjudica, lo mantendrá libre de franza, hipoteca ni otro gravamen alguno, ni enagenarlo en poder de manos muertas.

3a. Pedirá al juez respectivo que le de la posecion juridica en virtud de este despacho p'r el cual se demarcaran los linderos poniendo los mojoneras de estilo.

4a. Podrá cercarlo sin perjudicar las travecias, caminos y servidumbres; lo disfrutará libre y esclusiveamente destinandolo al uso y aprovechamiento que mejor le conviniere pero no podra enagenarlo antes de cuatro años de haber recibido la judicial posecion.

5a. Si contraviniere á estas conditiones perderá su derecho al terreno y será denunciable por otro que carezca de terreno y lo prezenda.

Por tanto mando que teniendose el presente titulo per firme y valedero, se tome razon de el en el libro á que corresponde y se le entregue

10 al interezado para su resguardo y demas fines.

Dado en la ciudad de los Angeles, capital del departamento de Californias, en papel comun, por falta de sellado á los seis dias del mes de Junio del año de mil ochocientos cuarenta y seis.

PIO PICO.
JOSÉ MATIAS MORENO,
Sc'rio Int'o.

Queda tomada razon de este superior despacho en al libro respectivo.
MORENO.

Filed in office Jan'y 22, 1853.

GEO. FISHER, *Sec'y.*

"*B.*"—*Translation of grant.*

Translation of grant. Pio Pico, constitutional governor of the department of Californias.

Inasmuch as Andres Pico, a Mexican by birth, has solicited for his personal benefit, and that of his family, the land known by the name of "Moquela-

11 mos," to the extent of eleven square leagues, having first made the necessary inquiries and investigations according to the requisitions of the laws and regulations, using the faculties in me vested, in the name of the Mexican nation, I have now ceded the land mentioned, declaring it his property by these presents, subject to the approval of the most excellent departmental assembly, and under the following conditions:

1st. He will be owner in fee of eleven square leagues on the river "Moquelumos," bordering on the north upon the southern shore of said river, on the east upon the adjacent ridge of mountains, on the south upon the land of Mr. Gulnak, and on the west upon the estuaries of the shore.

2d. The land which is hereby ceded he will keep free from obligations, mortgage, and every other encumbrance, and he will not convey it in mortmain

3d. He will apply to the proper justice to give him juridical possession by virtue of this title, who will designate the boundaries, placing the usual landmarks.

4th. He may enclose it without prejudice to the ways, roads and servi-
12 tudes. He will enjoy it freely and exclusively, appropriating it to such culture and use as may best suit him; but he must not sell it till four years after he shall have obtained juridical possession.

5th. If he shall violate these conditions, he will lose his right to the land, and it will be denounceable by another who may want and ask for the land.

Wherefore, I order that the present title, being held as firm and valid, an entry of it be made in the corresponding book, and that it be given to the party for his security and other ends.

Given in the city of Los Angeles, the capital of the department of Californias, on common paper, for want of stamped, on the sixth day of June, in the year eighteen hundred and forty-six.

PIO PICO.
JOSÉ MARIAS MORENO.

This superior despatch has been entered in the corresponding book.

MORENO.

Filed in office Sept'r 22d, 1852.

GEO. FISHER, *Sec'y.*

13 (1 S. D. K.)

"*C.*"—*Approval depart'l assembly.*

Asamblea depart'l de Californias.—De ordén de la ex'ma asamblea.

Departamental, pasó á manos de V. S. para el superior conocimiento del ex'mo s'or gobernador, tres titulos de terreno concedidos al norte de este departamento por el gobierno del mismo en favor de los S'res Dn. Guillermo Gulnak, comandante de escuadron, D'n Andres Pico y Dn. Francisco Azec, relativos, el primero su f'ha 13 de Enero de 1844, á once sitios de ganado mayor en al punto llamado Campo de los Franceses, el segundo f'ha 5 de Junio, pp'do igualm'te de once sitios de ganado mayor en el rio de los Moquelones, y el terreno de seis sitios en S'ta Isabel cuyos tres titulos, q'l tanto recomendo el pronto despacho de ellos. S. E. el s'or gobernador fueron aprobados, conforme á la ley de la materia en sesion de hoy por este honorable cuerpo á q'l tengo el honor de peretenecer como diputado secretario.

Y cumpliendo con aquella superior disposicion lo digo á V. S. p'a el fin indicado, protestandole á la vez, los mas distinguidas consideraciones de mi particular aprecio.

(2 S. D. K.)

14 Dios y libertad. Sala de sesiones en los Angeles á 15 de Julio de 1846.

NARCISSO BOTELLO,
Dep. S'rio.

S'or secret'o del despacho de gobierno de este department'o Dn. José Matias Moreno.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES
FOR THE STATE OF CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office and under my custody a por-

tion of the archives of the former Spanish and Mexican territory, or department of Upper California, do hereby certify that the two preceding and hereunto annexed pages of tracing paper, numbered one and two, and each of which is verified by my initials, (S. D. K.,) exhibit a true and accurate copy of a document on file, and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially,
[SEAL.] and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., this 25th day of June, 1852.

SAM'L D. KING,
Surv'y'r Gen'l Cal.

Filed in office Sept. 22d, 1852.

GEO. FISHER, *Sec'y.*

Translation of approval dep'l assembly.

Departmental assembly of California.

By order of the excellent departmental assembly, I convey unto your hands, for the superior knowledge of the excellent sir governor, three title deeds to land granted in the north of this department by the government of the same, in favor of Messrs. Guillermo Gulnak, the squadron commander, D'n Andres Pico and Don Francisco Arce, relatives, the first named dated 13th January, 1844, to eleven square leagues in the point called Campo de los Franceses; the second, dated 5th June last, likewise to eleven square leagues on the river of los Moquelamos; the third to six square leagues (sitios) in S'ta Isabel,
16 which three title deeds, of which I, at the same time, recommend the speedy despatch. His excellency the governor were approved, conformable to the law of the matter, in to-day's session by this honorable body, to which I have the honor to belong as secretary.

And complying with that superior arrangement, I communicate it to you for the purpose indicated, assuring you at the same of the most distinguished considerations of my particular esteem.

God and liberty. Hall of sessions, Los Angeles, the 15th of July, 1846.

(Signed) NARCISO BOTELLO,
Dep. Sec'y.

To the secretary of state of the government of this department.

JOSÉ MATIAS MORENO.

Filed in office Sept'r 3rd, 1853.

GEO. FISHER, *Sec'y.*

No. 2, Doc. H. J. T., annex'd to dep. of N. A. Den.

Pio Pico, gobernado constitucional del departamento de Californias.

La ex'ma asamblea departamental en sesion de hoy tuvo á bien de-
17 cretos lo siguiente: "Se aprueba la consecion hecha á favor de Don Andres Pico" de once sitios de ganado mayor en el rio de los
[SEAL.] "Moquelamos," que le fue concedido por el superior gobierno departamental, segun titulo librado con f'ha seis de Junio del corriente año de entera conformidad con la ley de 18 de Agosto de 1824, y articulo 5o del reglamento supremo de 21 de Novembre de Andres Pico lo hago asi saber.

Dado en la ciudad de Los Angeles, capital del departamento de Californias en papel comun, por falta del sellado, á los quince dias del mes de Junio de mil ochocientos cuarenta y seis.

PIO PICO.
JOSÉ MATIAS MORENO, *S'rio Int'o.*

Filed in office Jan'y 22nd, 1853.

GEO. FISHER, *Sec'y.*

18 "*D.*"—*Translation by minutes, departmental assembly.*

[Translation.]

Pio Pico, constitutional governor of the department of Californias.

The most excellent departmental assembly, in session of to-day, saw fit to decree as follows: The cession made in favor of Andres Pico of eleven square leagues of land upon the river of the "Moquelomes," which was ceded to him by the superior departmental government, according to the grant issued under date of the sixth of June of the current year, in entire conformity with the law of the 18th of August, 1824, and with the fifth article of the supreme regulations of the 21st of November, 1828, is hereby approved. And for the protection of Andres Pico I thus make it known.

Given in the city of Los Angeles, capital of the department of Californias, on common paper, for want of stamped, this fifteenth day of June, eighteen hundred and forty-six.

PIO PICO.

[Flourish.]

JOSÉ MATIAS MORENO, *S'rio Int'o.*

[Flourish.]

19 Filed in office Sept'r 22nd, 1852.

GEO. FISHER, *Sec'y.*

Opinion by Comm'r S. B. Farwell.

ANDRES PICO. *vs.* THE UNITED STATES. } Claim for a place called Moquelomes, in the county of , containing eleven square leagues.

The petitioner in this case states that he presented his petition for a grant to the above-named premises to Governor Pio Pico in the month of May, 1846. And it appears from the documents on file that the said governor, on the 6th day of June, 1846, issued his grant for the same, with boundaries, as follows, to wit: Bounded on the north on the southern shore of the river "Moquelomes;" on the east by the adjacent ridge of mountains; on the south by lands of Mr. Gulnak; and on the west on the estuaries of the shore.

The grant is issued with the usual conditions. And on the 15th day of June, 1846, received the sanction of the departmental assembly.

20 There is no proof of any segregation, nor has the commission any knowledge of how much land is contained within the boundaries as set forth.

There is no proof of any possession, occupancy, cultivation, or improvement whatever, nor of the performance of any of the conditions of the grant.

The action of the departmental assembly, in the opinion of the board, has not dispensed with the necessity of a performance of the conditions of the grant, necessary to be performed under the provisions of the Mexican colonization laws, to entitle the grantee to the benefit of the same, nor of a segregation of the land; that the quantity of land granted may be reduced at least to a reasonable degree of certainty.

The board are of the opinion that the proofs and exhibits in this case are insufficient to establish the validity of the claim, so as to entitle the petitioner to a confirmation of his grant, and that the same should be rejected.

Rejected.

1809

21 *Decree.*

ANDRES PICO
vs.
THE UNITED STATES. } No. 357.

In this case on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is not valid, and it is therefore decreed that the application for a confirmation be denied.

ALPHEUS FELCH,
R. AUG THOMPSON,
S. B. FARWELL.
Commissioners.

Filed in office October 3rd, 1854.

GEO. FISHER,
Secretary.

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings, and of the decisions in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed
22 with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's certificate.

Office of the board of commissioners to ascertain and settle the private land claims in the state of California.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the state of California, do hereby certify the foregoing nineteen pages, numbered from 1 to 19, both inclusive, to contain a true, correct and full transcript of the record of the proceedings, and of the decision of the said board of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 357 on the docket of the said board, wherein Andres Pico is the claimant against the United States for the place known by the name of "Moquelomos."

23 In testimony whereof, I hereunto set my hand and affix my private [SEAL.] seal, (not having a seal of office,) at San Francisco, California, this thirtieth day of March, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

Endorsed: Filed April 3rd, 1855.

JOHN A. MONROE, *Clerk.*

Notice of appeal.

On appeal from the board of United States land commissioners.

ANDRES PICO, app'l't,
vs.
THE UNITED STATES, app'lees. } Case No. 357, claim for "Moquelumes."

Sir: Please to take notice that the claimant in the above case will prosecute the appeal therein.

Yours, respectfully

CLARKE, TAYLOR & BECKH.
Atty's for claimant.

24 To the clerk of the United States district court for the northern district of California.

Endorsed: Filed May 9th, 1855.

JOHN A. MONROE, *Clerk.*

Notice of appeal.

ANDRES PICO
vs.
THE UNITED STATES. } Claim No. 357 on docket of the U. S. board of land commissioners.

To the clerk of the United States court for the northern district of California:

Notice is hereby given, in conformity to law, that the above-mentioned claimant appeals from the decision of the board of United States land commissioners, by which his claim to the tract known as the "Moquelomes" has been rejected.

ANDRES PICO,
By his attorneys, STANLEY & KING.

San Francisco, May 9, 1855.

Endorsed: May 12, 1855.

25 JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy Clerk.*

Petition for review.

Docket No. 184.

ANDRES PICO
vs.
THE UNITED STATES. } Appeal.

To the honorable Ogden Hoffman, jun'r, judge of the United States district court for the northern district of California.

The petition of Andres Pico, a citizen of California, respectfully represents:

That under the provisions of the act of Congress of March the 3rd, 1854, he presented a petition to the commissioners appointed under said act to examine claims to land in California, praying for a confirmation of his claim to the tract of land therein described, called "Moquelomes," situate in the present county of Sacramento, California, under a grant from Pio Pico, governor of California, dated June 6, 1846, and accompanied it by evidence of
26 his title; and to which for more full and particular description he begs leave to refer.

That his said claim, being designated as No. 357 on the docket of the said

commissioners, was rejected by them on the 3rd October, 1854; that the said land is situate within the limits of the northern district of California; that a transcript of the proceedings in the case was filed in the office of the clerk of the court for that district on the 3rd of April, 1855, and on the 9th May, 1855, notice was filed with the said clerk that your petitioner appealed from such decision.

Your petitioner prays for a rehearing of the case upon this appeal, that the said decision of the commissioners may be reversed and annulled; and that the court will make such decree and order as may be necessary and proper to recognize, confirm, and declare valid his title and claim to the premises mentioned and referred to in his said petition and evidence of claim.

And your petitioner will ever pray, &c.

STANLEY & KING, *Atty's for claimant.*

San Francisco, June 11th, 1855.

27 Endorsed: Received a copy this day, 11th June, '55.

S. W. INGE, *U. S. Dist. Att'y,*
Per JOHN A. GODFREY.

Filed June 11th, 1855.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy Clerk.*

Dep. of C. M. Webber.

United States district court, northern district of California.

SAN FRANCISCO, *Dec.* 31, 1855.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Charles M. Webber, a witness produced on behalf of the claimant in case No. 184, being an appeal from the board of commissioners to ascertain
28 and settle the private lands claims in the State of California, in case No. 357 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: Edward Stanly for claimant, and A. Glassell on behalf the United States.

Questions by claimant's counsel.

Your name, age and residence?

Answer. I reside in Stockton, San Joaquin county, and am forty-one years of age.

I know the rancho called Moquelomes, claimed by Don Andres Pico.

Witness being shown the description of the grant, and being asked if from the description there would be any difficulty in identifying the land granted, says:

Some of the boundaries are positive by natural lines, the southern line being established by the boundary line of my own claim, the northern boundary by a river, the Moquelomes, and the western line by the edge of the Tulare. There would from the description be no difficulty in identifying the boundaries.
29 The description I allude to is that contained in the transcript of the record now on file in the U. S. district court for the northern district of California. I cannot say how much the boundaries I have named contain.

After June, 1846, the state of the country was such that juridical possession would not have been given to the land. Capt. Sutter was the officer who presided over that section of the country, and was empowered to give juridical possession, if the same could have been done.

In the fall of 1848 I made a gift to Don Andres Pico of certain improvements which I had made on his land, consisting of several substantial corrals, and a small building. Pico had no stock on the rancho, nor a tenant, that I know of from my personal knowledge. The first I knew of the existence of the Moquelumne claim was in the fall of 1848. Indian hostilities existed in that section, which prevented the settlement of the country.

Cross-examined.

I have no interest whatever in the result of this suit.

30 CHARLES M. WEBER.

Endorsed: Filed January 10, 1856.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy Clerk*.

Petition for review.

ANDRES PICO, *vs.* THE UNITED STATES. } No. 184.—Appeal.—"Moquelome."

To the honorable Ogden Hoffman, jun'r., judge of the United States district court for the northern district of California.

The petition of Andres Pico, a citizen of the United States, respectfully represents:

That under the provisions of the act of Congress of the 3d of March, 1857, he presented a petition to the commissioners appointed under said act to examine claims to land in California, praying for the confirmation of his claim to the tract of land therein described, called "Moquelome," situate in the

31 present county of , under a grant made in his favor by Governor Pio Pico, on the 6th of June, 1846, and accompanied it by evidence of his title, and to which for more full and particular description he begs leave to refer.

That his said claim, being designated as No. 357 at the docket of the said commissioners, was rejected by them on the 3d October, 1854; that the said land is situate within the limits of the northern district of California; that a transcript of the proceedings and decision of the commissioners in the case was filed in the office of the clerk of the court for that district on the 3d of April, 1855, and on the 9th May, 1855, notice was filed with said clerk that your petitioner appealed from such decision.

Your petitioner prays for a rehearing of the case upon this appeal; that the said decision of the commissioners may be reversed and annulled, and that the court will make such decree and order as may be necessary and proper to recognize, confirm, and declare valid his title and claim to the premises mentioned and referred to in his said petition and evidence of claim.

32 And your petitioner will ever pray, &c.

ANDRES PICO,
By STANLEY & KING,
His Atty's.

Endorsed: Filed April 28th, 1856.

W. H. CHEVERS,
Deputy Clerk.

Answer.—No 184.

In the district court of the United States for the northern district of California.

ANDRES PICO, appellant,
vs.
THE UNITED STATES, appellees,
} Answer.—"Moquelome."

The respondents, for answer to the petition filed in this case, answer and say: It is true that the lands mentioned in said petition, and in said transcript of the proceedings before the said board of commissioners, lie within the said
33 northern district of California, and within the jurisdiction of this court.

But these respondents deny that the alleged title to the said land is valid, and aver that the same is invalid, and pray that the decision of the said board be affirmed, and that the title of the petitioner be decreed to be invalid.

A. GLASSELL,
Act'g U. S. Attorney.

Endorsed: Filed April 28th, 1856.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

Dep. of Dan. Murphy.

United States district court, northern district of California.

ANDRES PICO,
vs.
THE UNITED STATES.
} San Francisco, Dec. 5th, 1855.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Daniel Murphy, a witness produced on behalf of the claimant
34 in case No. 184, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 357 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: Edward Stanley, for claimant, and the U. S. dist. att'y, by A. Glassell, esq.

Questions by counsel for claimant.

What is your name, age, and place of residence?

Answer. My name is Daniel Murphy, my residence Santa Clara county, and I am twenty-nine years of age.

I know the rancho Moquelumnes, claimed by Don Andres Pico, and first knew it in 1844, and in 1848 I saw Don Andres Pico on it, with some twenty men and some horses. When I next saw it, it was about May, 1849, and I had about one thousand cattle on it, and saw Don Andres Pico, and he gave his consent to my occupying a part of the rancho with my cattle, and in June I put on the rancho about fifteen hundred more. Don Andres then claimed the rancho. Sutter was then the nearest officer who could have given juridi-
35 cal possession. I was, with the consent of Don Andres Pico, on the rancho about eighteen months.

DAN. MURPHY.

Cross-examined.

I have no interest whatever in the rancho.

DAN. MURPHY.

Sworn to and subscribed this 5th Dec., 1855.

JOHN A. MONROE,
U. S. Com'r.

Endorsed: Filed May 31, 1856.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

Decree of confirmation.

ANDRES PICO, appellant, *vs.* THE UNITED STATES, appellees. } No. 184.—"Moquelomes."—(Transcript No. 357.)

Stated term, April 24th, 1857.

On appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California.

Decree.

36 This cause coming on this day to be heard, upon the transcript of the proceedings and decision of the board of land commissioners of the United States to ascertain and settle the private land claims in the State of California, and the papers and evidence in the case, and the pleadings filed in this court, and counsel having been heard on the part of the United States and for the claimant.

In consideration of all which the court is of opinion that there is error in the decision of the said board, and that the same should be, and is hereby, reversed.

And this court doth order, adjudge, and decree that the title of the said claimant to the land described in the said transcript is valid, and the same is hereby confirmed.

The land, of which confirmation is hereby made, is of the extent of eleven square leagues and no more, and is known by the name of "Moquelomes," and is situated on the river Moquelomes, bordering upon the north upon the southern bank of said river, on the east on the adjacent ridge of mountains, on the south on the land of Mr. Gulnac, and upon the west upon the estuaries
37 of the shore, as described in the original decree and grant of the same by the governor of California, on the sixth day of June, 1846, a copy of which is on file in the transcript in this case.

Opinion confirming claim.

United States district court, northern district of California.

ANDRES PICO, appellant, *vs.* THE UNITED STATES, appellees. } Claiming the rancho of Moquelumnes.

The claim in this case is founded on a grant made by Governor Pio Pico, June 6th, 1846, and which was approved by the departmental assembly, June

fifteenth, of the same year. The genuineness of the grant, and of the certificate of approval, is testified to by N. A. Den. No attempt has been made to contradict or impeach him; nor is any doubt suggested as to the authenticity of the papers. A document is also produced from the archives purporting to be a communication from the secretary of the assembly, transmitting the title
38 papers to the secretary del despacho, with the approval of the assembly.

The claim was rejected by the board for want of proof of occupation and cultivation. Additional testimony has been taken in this court, from which it appears that in 1848 the grantee had some horses upon the land, and took possession of some improvements made upon it by C. M. Weber.

This evidence is, of course, wholly insufficient to show a fulfilment of the conditions. But if the grant and other papers be regarded as genuine, (and under the evidence we are compelled so to consider them,) the grantee obtained a full and complete title from the former government. The failure to perform conditions subsequent, though it might have exposed him to a denouncement of the land, did not until such a proceeding was had forfeit it; and his vested title remained unimpaired up to the change of sovereignty.

But even if in the case of a complete title we were authorized to declare the land forfeited where the grantee had so unreasonably delayed the performance of the conditions as to justify the presumption that he had abandoned his land, this case would not fall within the principle.
39

The grant was issued about a month before the American flag was raised in this country; the disorder incidental to the invasion of the country would naturally prevent any settlement in remote parts, and it seems unreasonable to say that any failure to perform conditions of a grant issued but a few months before the Mexican authority was finally subverted justify the inference "that the grantee had abandoned his land during the existence of the former government, and is now seeking to resume it from its enhanced value.—(U. S. *v.* Frémont, 17 How.)

The land granted is described as "eleven square leagues, bordering on the river Moquelamos, bordering on the north upon the southern shore of said river, on the east upon the adjacent ridge of mountains, on the south upon the land of Mr. Gulnac, and on the west by the extremes of the shore." There would seem to be no difficulty in indentifying this tract.

This case was submitted many months ago, without argument or observation of any kind on either side. It was rejected by the board for non-fulfilment of the conditions. But if the grant be really genuine, the non-performance cannot, under all circumstances, divest the title which the claimant acquired by the grant of the governor, approved by the departmental assembly.
40 No expediente containing the usual documents, (petition, informes, order of concession, diseño, copy of the grant, &c.,) has been produced. No diseño or map of the land has been exhibited. The only paper found in the archives is the communication of Botello, transmitting the title with the approval of the departmental assembly to the secretary del despacho, before alluded to.

The production, however, of the original title, authenticated by the testimony of an unimpeached and uncontradicted witness, leaves us no alternative but to regard it as genuine; and if the grant was duly made and approved, the title to the land passed to the grantee.

To any one acquainted with the facility and unscrupulousness with which, in this class of cases, frauds have been perpetrated and sustained by testimony apparently conclusive, a grant unsupported either by evidence from the archives, or by proof of occupation of the land, must appear suspicious. But even in such cases the court is not at liberty in the face of the uncontradicted testimony of unimpeached witnesses to substitute its own suspicions for proofs. In the case at bar, however, a document is found in the archives, which affords the best, if not the only moral evidence of the genuineness of the grant.

Under the proofs in this case, we do not feel warranted in pronouncing the title to be spurious, and rejecting the claim.

A degree of confirmation must therefore be entered.

41 *Order granting appeal.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Friday, the 4th day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES, } D. C. 184.—L. C. 357.—"Moquelumnes."
v.
ANDRES PICO. }

In this case, on the application of the United States attorney, made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court, rendered in said cause at the Dec., 1856, term, be, and the same is hereby, granted; and that a certified transcript
42 of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed 4th September, 1857.

JOHN A. MONROE, *Clerk.*

Dep. of Pio Pico on part of claimants.

In the district court of the United States for the northern district of California

THE UNITED STATES, } In land cases, dist. court, No. 184.—Land Com.
v. No. 357.
ANDRES PICO. }

Be it remembered that on the first day of June, A. D. 1861, at the city of San Francisco in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally ap-
43 peared Pio Pico, a witness produced in behalf of claimants in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows; his evidence being interpreted by Ramon de Zaldo, a sworn interpreter.

Present: Ed. Stanly, esq., for claimants; U. S. att'y and J. B. Williams, for U. States, and P. Della Torre.

Questions on behalf of the claimants.

Question 1st. What is your name, age, residence, and occupation?

Ans. Pio Pico; 60 years; Los Angeles county, ranchero.

2. Look upon paper marked Exhibit Pico No 1, annexed to this deposition, and say whether you have seen the originals thereof in the office of the surveyor general; and whether or not your signatures to said originals are genuine.

Ans. I have been taken to the office of surveyor general, to see the said
44 originals, and my signatures thereto are genuine.

3. Please state whether, at the time this grant was made, any map or petition was presented to you by Andres Pico.

Ans. Don Andres Pico must necessarily have presented a petition, or otherwise the governor could not issue a title and define its boundaries.

4. Do you know what was done with the petition and map?

Ans. They must be in the archives.

5. Are you acquainted with the handwriting of José Matias Moreno, and are his signatures to the papers above referred to genuine signatures.

Ans. I know his handwriting and signature, and the signatures are the same that he used at that time.

6. Where does José Matias Moreno now reside?

Ans. In the frontiers of Lower California.

45 7. Do you remember any facts or circumstances connected with the issuing of this grant that can call to your mind the time of its isssuance?

Ans. I can't recollect any other circumstance but that Andres Pico, being my brother, and having often required of me to make him a grant, which I had from delicacy refused. I at last yielded to his request.

8. Were this grant and the approval of the departmental assembly issued at the time they bear date?

Ans. Without doubt.

9. What was the distance between Los Angeles and Santa Barbara, and what the time usually occupied in travelling it on horseback?

Ans. It is forty odd leagues, and the travel would be performed at leisure inside of one day.

10. Had not Andres Pico been a soldier in the service of Mexico for several years prior to 1846?

(Objected to by the U. S. as irrelevant.)

46 Ans. Yes.

11. Did he or did he not claim that for these services he was entitled to land, as well as other citizens?

(Same objection.)

Ans. He did.

12. Do you know when Andres Pico first visited the rancho "Mokelumnes," or how he became acquainted with that section of country?

Ans. I do not know when he first visited it, but in 1842 he was at the north, and in 1843 and 1844 he was at the north with Micheltorena.

13. What disposition was made of the archives in 1846, after the last adjournment of the departmental assembly?

Ans. I do not know the disposition that the secretary of the departmental assembly made of its record or archives. I withdrew from the country, and, prior to my departure, saw the archives of the government carefully packed up.

Cross-ex'd by U. States.

47 14. What relation to you is Andres Pico, the claimant in this case?

Ans. Brother.

15. Prior to the date of this grant, had you made any grants or concessions of land to Andres Pico?

Ans. I believe not.

16. Did you make any after the date of this grant?

Ans. I believe not.

17. Did you at any time make sales of public lands to this claimant?

Ans. Of no other lands but those belonging to the missions. They were not considered public lands, but belonged to a community.

18. When did you make those sales, and what mission lands did you sell to him?

(Objected to as irrelevant.)

Ans. This question does not belong to this case. Willing as I am to give

testimony of my acts as governor in every respective case, I decline an-
48 swering this question.

19. By whom was Morena appointed secretary?

Ans. By the government of the department—I mean by myself.

20. What was the date of his appointment?

Ans. I cannot remember.

21. Did you remain in Los Angeles during the whole month of June, 1846?

Ans. I do not remember precisely. I cannot remember when I left Los Angeles. I may have been there the whole month of June, but know I was there a part of that month.

22. Did you leave Los Angeles at any time between the first of June and the middle of July?

Ans. I cannot fix the day of my leaving Los Angeles, but towards the 18th or 20th of June I went out of Los Angeles.

49 23. For what purpose did you leave Los Angeles, and where did you go?

Ans. I left on a visit to the pueblos of the northern part of the State.

24. How far north did you go?

Ans. I reached as far north as Santa Margarita, the rancho of Estrada, north of San Luis Obispo.

25. Were there any political disturbances which induced your visit to the north?

Ans. If it is the last question that is to be put to me, finding that they have no relevancy to this case, as I have come here to prove my own signature, I will answer it; but if this is to go on about acts of my former position, from this moment I decline answering.

(Counsel for the U. States informs witness, through the interpreter, that it is not the last question which it is proposed to put to him.

That the U. S. claim the right which emanates from all points which the law permits them to examine on.)

50 26. Question repeated.

Answer. I don't remember.

27. To refresh your memory, as you say you don't remember, I would ask you whether there was not some political difference between General Castro and yourself as governor, which induced your visit to the north?

Ans. I have to repeat once more that that question does not appertain to this case, and that I do not consider myself bound to reveal what took place at that time between the commander general of California and myself, as governor.

28. Do you recollect the differences between yourself and Gen'l Castro?

Ans. As a matter of courtesy I am willing to give the history of the whole country. It is not the lack of memory; it is that I do not feel myself bound to reveal the acts of my former government.

29. While you were at the north did you meet Gen'l Castro?

51 Ans. We met at Santa Margarita.

30. What was the date of your meeting him at Santa Margarita?

Ans. I don't remember.

31. How long did you remain at Santa Margarita?

Ans. I have no recollection of the length of time I was there.

32. Where did you go from Santa Margarita?

Ans. I returned below.

33. When did you arrive at Los Angeles on your return?

Ans. I don't remember the day I arrived. It was in the middle of the year 1846.

34. Who accompanied you on your visit to the north?

Ans. There were several deputies, and a force commanded by Andres Pico; also by Secretary Moreno.

52 35. Do you remember receiving a petition of Andres Pico for this tract of land, and where were you, and at what time did you receive it?

Ans. I do not remember as to the date of the petition, but it was probable at Los Angeles that I received it.

36. Do you remember the diseño which should have accompanied the petition?

Ans. I have no remembrance even that he presented a diseño.

37. Did you refer the petition to any officer for an informe, and if so, to whom did you refer it?

Ans. Upon his petition I issued to him the grant myself. I did not refer it to any officer.

38. Did you refer the grant and petition to the departmental assembly?

Ans. I presented to the assembly the title, recommending it for its approval.

53 39. Did you deliver the title to Andres Pico before or after the approval of the departmental assembly?

Ans. I have no distinct recollection of it.

40. Was it the custom of the governor of California to send the "expediente" or "titulo" to the departmental assembly, for the purpose of obtaining its approval to a concession of land?

Ans. The usual custom was that the title papers were given by the governor to the interested party, who afterwards, either by themselves or through the means of the government, applied to the departmental assembly for its approval.

41. What papers accompanied the application for an approval by the assembly?

Ans. The title papers, (titulo.)

42. Who applied for the approval of the departmental assembly in this case, Andres Pico or yourself?

54 Ans. I do not distinctly recollect, but am led to believe I did it at the request of my brother.

43. Look at paper, purporting to be certificate of approval of the departmental assembly, filed as the original, by the claimant in this case, and say if that is your signature to it, and if you recollect the circumstances connected with it?

(The original certificate of approval brought before the commissioner by Hopkins, keeper of archives, sur. gen'l's office, and shown to the witness, produced from the records of the land commission.)

Ans. On perusal of this paper I find that it has my signature, that it is in the handwriting of my secretary and signed by him; I do not remember any other circumstance, but that fixed my mind that I was there on the 15 of June, in Los Angeles.

44. Do you recollect the fact that the departmental assembly did confirm this grant?

Ans. I remember it because I see my name to the paper.

55 45. Do you remember the approval of the departmental assembly independently of this paper last shown you, or do you only think it was approved because you see this paper?

Ans. Had I been shown the title paper alone, and the question was asked me, I should have said "I do not remember," but on seeing said paper it fixes my mind that it was approved.

46. Having seen the paper do you now recollect the approval of the assembly, or is your belief of the approval only a conclusion that you draw from seeing the paper?

Ans. I believe it was approved because I see it here certified.

47. You have said upon your direct examination that both the papers shown you were signed by you at the time they purport to bear date, do you recollect this distinctly, or is it only a conclusion from seeing the papers?

Ans. Had I not been presented the title paper in this case, and been asked if I remembered its date, I would have said "I do not," although I remem-

56 bered I had made a grant to my brother. On presentation of said papers under my own signature, I come to the knowledge of their date.

48. When you signed the certificate of approval of the departmental assembly, did you certify the fact of approval of your own knowledge, or did you certify from information given you by any one else?

Ans. I must have been informed by the secretary, who was the channel through whom the governor became acquainted with such an approval.

49. Then you did not know yourself of the action of the departmental assembly?

Ans. No, I don't remember. It was not necessary that I should be present.

50. What day did you leave Los Angeles for Mexico?

Ans. I believe it was in the night of the 12 or 13 of August, 1846.

57 It is admitted by the counsel of the United States that Exhibit Pico No. 1, annexed to this deposition, contains correct copies of the originals filed by the claimant before the land commission, said originals being now produced before the comm'r by R. C. Hopkins, keeper of the Spanish archives of surveyor general's office.

Redirect.

51. Please state if this examination has called to your mind any conversation had with your brother when he applied to you for his grant. If so, state it.

Ans. I having lost the title papers of "Jamul," my rancho, granted to me formerly by General Victoria, I granted it to myself while governor, and my brother, aware of that fact, kept remonstrating to me about my delicacy in granting him the Mokelumnes, saying he had as much right to a grant as I had myself.

PIO PICO.

Subscribed and sworn to before me this 1st day of June, A. D. 1861.

W. H. CHEVERS, *U. S. Com'r.*

58 Endorsed: Filed June 1, 1861.

W. H. CHEVERS, *Clerk.*

Exhibit Pico No. 1.

Pio Pico, gobernador constitucional del departamento de Californias.

[SEAL.] Por cuanto Don Andres Pico, Mejicano de nacimiento, ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de "Moqulamos," en estencion de once sitios de ganado mayor; practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas a nombre de la nacion Mejicano, he venido en concederle el terreno mencionado, declarandole la propiedad de el por las presentes letras, á reserva de la aprovacion de la ex'ma asamblea departamental y bajo las condiciones siguientes.

1a. Sera dueño en propiedad de once sitios de ganado mayor en el
59 rio de "Moquelamos" que linda al norte con la orillas sur de dicho rio; al oriente con la sierra inmediata, al sur con el terreno del Señor Gulnak, y al poniente con los esteros de la playa.

2a. El terreno que se le adjudica, lo mantrendrá libre de fianza, hipoteca ni otro gravamen alguno, ni enagenarlo en poder de manos muertos.

3a. Pedirá al juez respectivo que le de la posesion juridica en virtud de este titulo, por el cual se le demarcaran los linderos, poniendo los mojoneras de estilo.

4a. Podrá cercarlo sin perjudicar las travecias, caminos y servidumbres; lo disfrutará libre y esclusivamente destinandolo al uso y aprovechamiento que mejor le conviniera; pero no podrá enagenarlo antes de cuatro años de haber recibido la judicial posesion.

5a. Si contraviniera á estos condiciones perderá su derecho al terreno y será denunciable por otro que carezca de terreno y lo pretenda.

Por tanto, mando, que teniendose el presente titulo por firme y valedero, se tome razon de el en libro á que corresponda, y se le entregue al interesado para su resguardo y demas fines.

60 Dado en la ciudad de los Angeles, capital del departamento de Californias, en papel comun, por falta de sellado, á los seis dias del mes de Junio del año de mil ochocientos cuarenta y seis.

PIO PICO.
JOSÉ MATIAS MORENO, *S'rio. Yut'o.*

Queda tomada razon de este superior despacho en el libro respectivo.
MORENO.

Endorsed: Exhibit No. 1 to the deposition of N. A. Den, taken in No. 357. H. J. T. No. 357. Andres Pico, Moquelumo. Doc. H. J. T. No. 1, ann'd to the dep. of N. A. Den, taken before Com'r H. J. Thornton.
Filed in office Jan'y 22, 1853.
GEO. FISHER, *Sec'y.*

Recorded in book A, page 616, San Joaquin county records, July 2d, A. D. 1851, at 12 o'clock m.
A. A. MIX, *County Recorder.*

Recorded in Book of Rec. of Ev., vol. XIV, pages 202 and 203.

61 Pio Pico, gobernador constitucional del departamento de Californias.

La ex'ma asamblea departamental en sesion de hoy tubo á bien decretar lo sig'te:

[SEAL.] "Se aprueva la concesion hecha á favor de Don Andres Pico, de once sitios de ganado mayor en el rio de los 'Moquelamos' que le furé concedido por el superior gobierno departamental, segun titulo librado con fecha seis de Junio del corriente año, de entera conformidad con la ley de 18 de Agosto de 1824, y articulo 5o del reglamento supremo de 21 de Noviembre de 1828." Y para resguardo de la parte de Don Andres Pico lo haga á si saber.

Dado en las ciudad de los Angeles, capital del departamento de Californias, en papel comun, por falta de sellado, á los quince dias del mes de Junio de mil ochocientos cuarenta y seis.

PIO PICO,
JOSÉ MATIAS MORENO, *S'rio Yut'o.*

Endorsed: Exhibit No. 2 to the deposition of N. A. Den, taken in No.
62 357. H. J. T. No. 357. Andres Pico, Moquelumo. Doc. H. J. T. No. 2, annx'd to the dep. of N. A. Den, taken before Com'r H. J. Thornton.
Filed in office January 22, 1853.
GEO. FISHER, *Sec'y.*

Recorded in book A, page 617, San Joaquin county records, July 2d, A. D. 1851, at 12 o'clock m.
A. A. MIX, *County Recorder.*

Recorded in Book of Rec. of Ev., vol. XIX, pages 203 and 204.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, J. Mandeville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory, or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the
63 power vested in me by law, do hereby certify that the five preceding and hereunto annexed pages of tracing paper, numbered from one to five, inclusive, exhibit a true, full, and correct copy of two (2) original documents, together with the endorsements thereon, as the same appear on file in case No. 357 on the docket of said board of commissioners.

In testimony whereof, I have hereunto signed my name officially, and caused [SEAL.] my seal of office to be affixed, at the city of San Francisco, this 30th day of May, 1861.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS,
Keeper of Archives.

Endorsed: Filed June 1, 1861.

W. H. CHEVERS, *Clerk.*

64 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the 12th day of June, in the year of our Lord one thousand eight hundred and sixty one,

Present: The honorable Ogden Hoffman, district judge.

Order to file mandate of the U. S. Sup. Court.

THE UNITED STATES
v. } D. C. 184.
ANDRES PICO.

And now at this day comes Edward Stanly, esq., counsel for the claimant, and presents the mandate of the Supreme Court of the United States in the above cause, and moves that the same be filed, whereupon it is ordered by the court that the said mandate be filed and made a part of the records of this court in this cause.

Endorsed: Filed June 12, 1861.

W. H. CHEVERS, *Clerk.*

65 *Mandate U. S. Supreme Court.*

UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the honorable the judge of [SEAL.] the district court of the United States for the northern district of California, greeting:

Whereas lately, in the district court of the United States for the northern district of California, before you in a cause between Andres Pico, appellant, and the United States, appellees, the decree of the said district court was in the following words, viz: "The court is of opinion that there is error in the decision of the said board, and that the same should be and is hereby reversed.

"And this court doth order and adjudge and decree that the title of the said claimant to the lands described in said transcript is valid, and the same is hereby confirmed. The land of which confirmation is hereby made is of the extent of eleven square leagues and no more, and is known by the name of 'Moquelomes,' and is situate on the river Moquelumne, bordering upon the north upon the southern bank of said river, on the east on the adjacent ridge of mountains, on the south on the lands of Mr. Gulnac, and upon the west upon the estua-
66 ries of the shore, as described in the original decree and grant of the same by the governor of California, on the sixth day of June, 1846, a copy of which is on file in the transcript in this case," as by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States, by virtue of an appeal agreeably to the act of congress in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-nine, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said district court for further proceedings to be had therein
67 in conformity to the opinion of this court. 12 March.

You, therefore, are hereby commanded that such further proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December in the year of our Lord one thousand eight hundred and fifty-nine.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Endorsed: Filed June 12, 1861.

W. H. CHEVERS, *Clerk.*

Exhibit U. S. No 1, *for the U. S.*

Sello tercero.—Dos reales.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

68 XIMENO.
ANTONIO MARIA OSIO,
Señor prefecto del 2d distrito.

Pio Pico y Andres Pico, vecinos de la municipali dad de San Diego,
[SEAL.] ante V. S. con el debido respeto p como mas haya lugar en derecho compareciendo diciendo, que habiendonos agraciado el gob'no superior de este departamento con los terrenos que comprende rancho de Ternicula, que lo era de la mision de S'n Luis Rey para que en el progresasemos con nuestros bienes que son en bastante cantidad hubimos la posecion de esta gracia provicionalm'te en el mes de Octubre procsimo pasado, en este tiempo que hay hasta la f'a y aun cuando se corran los tramites de estilo hemos notado que los Indios deaquel establecimiento repugnan nuestra establidad en el mencionado parage, olegando razones que aunque carecen de los meritos suficientes para considerarlos no obstante haun imprecion por el riesgo en que desde luego quedan nuestros intereses seranado de la averion indicada.

Estos mismos hombres parece que quedarion mas conformes y de al-
69 gun modo satisfechos con que se les dejara para su beneficio el rancho ó

terreno de Temenla habriendoles el partido de que se hago un cambio de aquellos per los de Santa Margarita comprometiendonos endemnizarles los mejoras que salo consisten en una viuda de mediano estado, cuyo valor tasado a juicio de pesitos pagaremos inmediam'te con ganado vacuno ò caballas segun convenga al establecim'to y á precios corrientes. Esta proposicion que se les puede hacer en terminos propios poniendoles á la vista los buenos resultados.

Sello tercero.—Dos reales.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey en el departamento de los Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO.

[SEAL.] Antonio Maria Osio, que de ella les deben sobrevenir calmará en sus animos la inquietud que se les advierta por la perdida de Ternicula y nuestras personas, familias é intereses quedaran asegurados de un modo mas duradero y beneficio á ambas partes. El s'or mayor domo de S'n
70 Luis Rey dará su informe con la imparcialidad que acostumbra y notenemos duda que en el hará constar que en Santa Margarita no hay otros bienes de campo que los nuestros y que no resulten al establecim'to ningun gravamen por este contrato.

Por estas circunstancias y lo de haber estado en posecion provicional del pequeño parage de su Onofre desde el mes de Marzo de 1863, como lo acredita el documento que debidam'te acompañamos bajo el numeros colindante con el de Santa Margarita y en donde parte de nuestros ganados, sea han mantenido hasta la f'ha presente, nos ha indicado á suplicado por medio desera prefectura al ex'mo s'or gob'dor se sirva concedernos permiso para poner en practica el cambio propuesto, incluyendo de consiguiente el diseño respectivo que abrasa al mismo t'po, el terreno de San Onofre, bajo los restricciones y demas circunstancias que á S. E. le parescan convenientes; obligandonos igualm'te á recibir el pago de la viña tan luego como se nos ecsija en los terminos indicados. Por lo es-
71 puesto, A. V. S. pedimos y supplicamos, se digne dar oportunam'te á esta ntra solicitud el tramite que le corresponda, é informarla como lo crea de justicia á cuya gracia quedaremos reconocidos.

Ang's, Febrero 22 de 1841.

PIO PICO.
ANDRES PICO.

MONTEREY, 10 *de Mayo de* 1841.

Vista la peticion con que dá principio este espediente los informes de la prefectura del segundo distrito; el abaluo hecho sobre los bienes raices ecsistentes en el parage de Santa Margarita, la voluntad esplicitamenta manifestada por los indigenas de San Luis Rey, con todo lo demas que se tubo presente y les convino de conformidad con las leyes y reglamentos de la materia se declara à los Señores D'n Pio y Andres Pico, dueños en propiedad de los parajes conocidos con los nombres de San Onofre y Santa Margarita colindante al U. con el punto llamado el Ballecito y la Tinaja al O. con la punta de San Mateo al S. con los linderos del pueblo de los Flores y el Morro, y al este con el terreno del
72 Cajon, segun esplica el diseño que corre agregado en el esped'te y bajo de las condiciones de que los interesados satisfaran al establecim'to de San Luis Rey la canditad de tres mil trescientos pesos, por los bienes raices que se abolvaran en Santa Margarita, á la aprovacion de la ex'ma junta departamental y à las condiciones que se estipulasen. Estiendose el despacho correspond'te tomese razon en el libro respectivo para la devida constancia. El S'r D'n Juan B. Alvarado, gobernador constitucional del departam'to de las Californias asi lo mandó decretó y firmó de que doy fee.

ANGELES, *Julio* 11 *de* 1845.

En sesion de este dia se aprobo por la ex'ma asamblea la proposicion del dictamen que antecede, mandando se devuelva el expediente al ex'mo s'r gobernador para los fines que son convenientes.

PIO PICO.
AGUSTIN OLVERAS.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State
73 of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory, or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California by virtue of the power vested in me by law, do hereby certify that the seven preceding and hereunto annexed pages of tracing paper, numbered from one to seven, inclusive, exhibit a true, full and correct copy of the petition of Pio Pico and Andres Pico to the gov'r of California. The vista la peticion, and the approval of the assembly, as found in expediente No. 235, entitled: "Espediente promovido por los ciudadanos Pio y Andres Pico en solicitud del parage conocido con el nombre de Santa Margarita, 1841, 235," as the same appears among said archives.

In testimony whereof, I have hereunto set my name officially, and caused my
[SEAL.] seal of office to be affixed, at the city of San Francisco, this 22d day of Jany, 1862.

E. F. BEALE,
74 *U. S. Surveyor General for California.*

Examined and found correct.

Endorsed: Filed March 31, 1862.

W. H. CHEVERS, *Clerk.*

Exhibit U. S. No. 2, for U. S.

PIO AND ANDRES PICO
vs.
THE UNITED STATES. } No. 700.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioners is valid, and it is therefore decreed that their application for a confirmation thereof be allowed.

The land of which confirmation is hereby given is situate in the county of of San Diego, containing twenty square leagues and bounded as follows: Commencing at a point on the mountain called Tinajos, from thence south to a hill known as the Moro, thence in a direct line to the seacoast, striking the coast on the north bank of the valley of Saino Ray, thence along the coast to
75 the boundaries of "Las Flores," and along said boundaries to the point of of San Mateo, from thence continuing along a ridge of a hill on the northern side of the valley of Talega to the foot of the mountain, from thence along the foot of the mountain to the place of beginning.

Reference being had to the map on file accompanying the espediente and the deposition of John Foster and J. J. Warren.

R. AUG. THOMPSON,
S. B. FARWELL, *Commissioners.*

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law do hereby certify that the two preceeding and hereunto annexed pages, numbered from one to two, inclusive, exhibit a true, full and correct copy of the decree
76 of the U. S. land commission, together with the following endorsement: "Pio Pico *et al.* Sta. Margarita Las Flores. Decree of confirmation. Filed in office April 24, 1855. Geo. Fisher, sec'y. Recorded in Record of Decisions, vol. 2, page 631. Geo. Fisher, sec'y," as the same appears on file in case No. 700 on the docket of said board of land commissioners.

In testimony whereof, I have hereunto signed my name officially, and caused [SEAL.] my seal of office to be affixed, at the city of San Francisco, this 23d day of Jan'y, 1862.

E. F. BEALE,
U. S. Surveyor General for California.

Endorsed: Filed March 31st, 1862.

W. H. CHEVERS, *Clerk.*

Exhibit U. S. No. 3, for U. S.

No. 700.—U. S. land commission.—Pio Pico and Andres Pico.

Andres Pico, one of the claimants in the above-entitled case, being duly sworn, doth depose snd say: That about the month of May, A. D. 1841,
77 Juan B. Alvarado, then governor of California, executed and delivered to Pio Pico and this deponent a grant, in full property, of the lands and rancho claimed in this case, called Santa Margarita and San Onofre; that said grant was left in the custody of said Pio Pico, where it remained until about the year 1846, when said Pio Pico left California for Sonora; that said Pio Pico informed deponent that said grant was left with his wife, then living on said rancho Santa Margarita, and that the desk in which said grant with other papers had been deposited was broken open and rifled of its contents. That this deponent has made diligent search for said grant, and has frequently examined and searched at Santa Margarita, and other places where said grant was likely to be found, without finding said grant. That, at the time said Pio Pico left California in 1846, the place Santa Margarita, then the stopping place of said Pio Pico, was taken forcible possible by a military force of the United States, and given up to plunder by them on retiring. After said Pio Pico had
78 left for Sonora, deponent believes said grant, with many other valuable papers belonging to deponent and said Pio Pico, were then destroyed; that said grant and other papers so left by said Pio Pico at Santa Margarita in 1846 have never been found by this deponent.

ANDRES PICO.

Subscribed and sworn to before me, on this 15th day of March, A. D. 1855.
PETER LOTT, *Commissioner.*

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody the papers of the late board of commissioners to ascertain and settle the private

land claims in California, by virtue of the power vested in me by law, do hereby certify that the two preceding and hereunto annexed pages, numbered from one to two, inclusive, exhibit a true, full and correct copy of the petition of Andres Pico, together with the following endorsement: "No. 700 U. S. land
79 commission, Pio Pico and Andres Pico, Santa Margarita and San Onofre, deposition Andres Pico taken before commissioner Peter Lott, filed in office March 15th, 1855. Geo. Fisher, sec'y. Recorded in Ev. B., vol. 11, to 583, Ex. B. & G. Geo. Fisher," as the same appears on file in case 700 on the docket of said board of land commissioners.

In testimony whereof, I have hereunto signed my name officially, and [SEAL.] caused my seal of office to be affixed, at the city of Francisco, this 23 day of January, 1862.

E. F. BEALE,
U. S. Surveyor General for California.

Endorsed: Filed March 31st, 1862.

W. H. CHEVERS, *Clerk.*

Archive Exhibit No. 1, filed by U. S.

Session of the 15th day of June, 1846.

The proceedings of the previous session being approved, an official communication from the illustrious ayuntamiento, in the form of a proposal, was reported, to which are annexed an official note from the secretary of state, in which it is provided, by order of his excellency the governor, that the dispositions
80 of the ayuntamiento be transmitted to the governor for his signature, and a proposition from one of the members of that body requesting that the proper explanation be made, as the powers of the governor are assigned to them according to the organic laws.

The whole being laid before the body, its decision was considered important, for which it was taken up for discussion, and being sufficiently argued, it was resolved as a subject of general interest to the department that, meanwhile, the ordinance required by article 134 of the 10th power of the organic laws shall be passed; all the measures emanating from the ayuntamiento or the authorities who exercise their functions under the department be submitted to the governor, for him to act in conformity the latter part of the article 152 of the decree of the 20th March, 1837; it was then resolved that notwithstanding there would not remain a quorum in the assembly, in consequence of the absence of Señor Olvera, to continue its session. The señor diputados were dispatched to meet again promptly, whenever the governor shall direct any communication from the district of the north.

81 There being no other business, the session was adjourned.

(Sig'd) FRANCISCO FIGUEROA, *President.*
(Sig'd) NARCISO BOTELLO, *Sec'y ad interim.*

U. S. District Court.

THE UNITED STATES
v. } No. 184.
ANDRES PICO.

It is hereby stipulated and agreed that, for the purposes of this cause, the foregoing is a correct translation of the original record of proceedings of the departmental assembly, at its session of June 15, 1846; and that said original

is now in custody of the U. S. surveyor general for California, and forms part of the Mexican archives, now in the immediate keeping of Mr. R. C. Hopkins.

San Francisco, March 29, 1862.

EDW. STANLY,
Att'y for Claimant.
WM. H. SHARP,
U. S. Att'y.

Endorsed: Filed March 31st, 1862.

W. H. CHEVERS, *Clerk.*

82 *Dep. of R. C. Hopkins, on part of U. S.*

In the district court of the United States for the northern district of California

THE UNITED STATES
v.
ANDRES PICO.
} In land cases, dis't court, No. 184.—Land com. No. 357.

Be it remembered that on this 22d day of March, A. D. 1862, at the city of San Francisco in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California, to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared R. C. Hopkins, a witness produced in behalf of the United States in the above-entitled cause, now pending in the said court, under the acts of
83 Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: U. S. att'y and P. Della Torre, esq., and J. B. Williams, for U. S., and Edward Stanly, esq., for claimant.

Questions in behalf of the United States.

Question 1st. State your name, age, residence, and occupation?

Ans. R. C. Hopkins; lawful age; residence, San Francisco; occupation, keeper of the Spanish and Mexican archives, in custody of the U. S. surveyor general for California.

2d. Look at the papers now shown you, marked Exhibits Hopkins Nos. 1 and 2, and to be attached to this depositions and state what they are?

Ans. Exhibit No. 1 is a photographic copy of the grant produced by the claimants in this case. Exhibit No. 2 is a photographic copy of the certificate of approval by the departmental assembly of said grant, also produced by the claimant. Both of the originals of these exhibits are on file in the case
84 among the papers of the late board of land commissioners, now in custody of the U. S. surveyor general.

The signature of Gov. Pio Pico, as found in the archives, is very uniform with the exception of the formation of the "Ps." He appears to have had three several ways of forming the "Ps" in his name. The "P" in his signature to this grant, and to the certificate of approval, resemble those which are found in his modern signatures, and which I had found in only three instances, I believe, in the archives. One is the grant to Los Calaveras—the espediente of Los Calaveras. This espediente is not referred to in any original index in the archives. Another one is found in the unfinished espediente of José Maria Avilo for San Miguelito, which is also not referred to in any original index in the archives. And this form of "P" is also found in the naturalization paper of Manuel Torres, dated in November, 1845. The espediente for Los Cala-

veras, Francisco Pico *et al.*, is the only expediente found in the archives
84 of which a corresponding grant has been presented to the land commission with this form of "P."

The grant to Andres Pico in this case has no corresponding espediente in the archives, and as a matter of course does not appear in the Hartwell Index. It is, however, referred to in a communication from Narciso Botello, dated 15th July, to the secretary of state, Moreno. There appears to be some difference in the hand-writing of Botello, as found in the letter referred to, and his contemporaneous handwriting, as found in the archives. Prior to the binding of the archives in 1858, they consisted of loose sheets and unbound books, which were preserved in tin boxes.

I do not remember that the archives show that Michiltorena was ever north of Monterey during his term of office.

Signatures similar to that of Gov. Pico on the papers produced in this case are found appended to his deposition taken before the land commission.

The date of the certificate of approval produced in this case is June 15, 1846. The journal of the session of the assembly, held in this day,
86 shows no approval or mention of the grant, nor do the journals of any other session mention or note the approval of said grant. The journal of the session of June 15, 1846, is verified by Francisco Figueroa, president, and Narciso Botello, secretary.

José Matias Moreno is at present governor or political chief of Lower California.

I think there is no doubt but that the signatures of Pico to the originals of Exhibit Nos. 1 and 2 are his genuine signatures.

R. C. HOPKINS.

Subscribed and sworn to before me, this 22d day of March, A. D. 1862.

W. H. CHEVERS,
U. S. Comm'r.

Endorsed: Filed April 4, 1862.

W. H. CHEVERS, *Clerk.*

87 *Exhibit Hopkins No.* 1, *for U. S.*

Pio Pico, gobornador constitucional del departamento de California.

Por cuanto Don Andres Pico, Mejicano de nacimiento ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de "Moguelamos" en estencionde once sitios de ganado mayor: practicadas préviamenta las diligencias y averiguaciones consernentes segun lo dispuesto por eyes y reglamentos, usando de las facultades que me son conferidas á nombre de la nacion Mejicana, he venido en concederle el terreno mencionada, declarandole la propiedad de él por las presentes, letras, à reserba de la aprovacion de la ex'ma assemblea departamental, y byja las condiciones siguientes.

1a. Será dueño en propiedad de once sitios de ganado mayor en el rio de "Moquelamos" que linda el norte con la orilla sur de dicho rio; al oriente con el terreno del Señor Gulnak, y al poniente con los esteros de la playa.

2a. El terreno qui se le adjudica, lo mantendrá libre de fianza, hipoteca ni otro gravamen alguno, ni enagenarlo en poder de manos muertos.

88

89 3. Pedirá al juez respectivo que la dé posesion juridica en virtud de este titulo, por el cual se le demarcarán los linderos, poniendo las mojoneras de estilo.

4a. Podrá celcarlo sin perjudicar las travesas caminos y servidumbres; lo disfrutará libre y esclusivamente destinandolo al uso y aprovechamiento que

mejor le convinido por no podrá enagenarlo antes de cuatro años de haber resibido la judicial posesion.

5. Si contraviniere á estas condiciones perderá su derecho al terreno y será denunciable por otro que carezca di terreno y lo pretenda.

Por tanto, mando, que teniendose el presente titulo por firme y valedero, se tome razon de el en el libro a que corresponda, y se le entregue al interezado para su resguardo y demas fines.

Dado en la ciudad de los Angeles, capital del departamento de Californias, en papel comun, por falta de sellado, á los seis dias del mes de Junio del año de mil ochocientos cuarenta y seis.

PIO PICO.
JOSÉ MARIAS MORENO.
S'rio Int'o.

Queda tomado razon de este superior despacho en el libro respectivo.
MORENO.

90

Exhibit Hopkins No. 2. for U. S.

91 Pio Pico, gobornador constitucional del departamento de Californias.

La ex'ma asamblea departamental en sesion de hoy tubo á bien decretar lo sig'te: "Se aprueva la concesion hecha á favor de Don Andres Pico, de once sitios de ganado mayor en el rio de los 'Moquelamos,' que le fue concedido por el superior gobierno departamental, segun titulo librado con fecha seis de Junio del corriente año, de entera confirmidad con la ley de 18 de Agosto de 1824, y articulo 5º del reglamento supremo de 21 de Noviembre de 1828." Y para resguardo de la parte de Don Andres Pico lo hago asi saber.

Dado en la ciudad de los Angeles, capital del departamento de Californias, en papel comun, por falta de sellado, á los quince dias del mes de Junio de mil ochocientos cuarenta y seis.

PIO PICO.
JOSÉ MARIAS MORENO.
S'rio Int'o.

92 *Opinion rejecting claim.*

UNITED STATES
vs.
ANDRES PICO. } No. 184.—May 20, 1862.—"Moquelomos."

The claim in this case was confirmed by this court, but with much hesitation and grave suspicions as to its genuineness.

On appeal to the Supreme Court, the decree was reversed, and the cause remanded for further evidence.

It is apparent, from the opinion of the court, that the further evidence contemplated was either that derived from the archives or secondary evidence of those records of the kind which the court has declared it will require. No such testimony has been given.

The only additional evidence has been that of Pio Pico. But he merely testifies to the genuineness of his signatures, and that merely from the fact of seeing them on the documents, and not from any recollection of having made the grant.

The only papers produced are the grant dated June 6, 1846, and a certificate of approval by the departmental assembly, dated June 15th, 1846.

94 Both of these are produced from the custody of the claimants. There is also produced a communication signed Botello, deputy secretary of the assembly, addressed to Moreno, secretary of state, in which he informs the latter that the grant was, with two others, approved on the 15th July.

1851

With the exception of this communication, the archives contain no trace of the existence of this. There is no espediente—no petition or informes—no note of it in the corresponding book—no borrador of the title delivered to the party, nor any allusion to the grant in any document or record whatever.

The communication signed Botello is on a detached sheet of paper, which could readily have been placed among the numerous documents in the surveyor general's office at any time previous to 1858, when they were collected and bound up in books. In the case of Limantour, it was shown that the introduction of a fraudulent espediente into the archives was by no means impracticable.

But there are objections to this document.

95 The handwriting evidently differs from that of Botello contemporaneously with its date.

2nd. It conflicts with the certificate of approval, signed by Pio Pico—one states the approval to have been given on the 15th June, the other on the 15th July.

3rd. At the date given by Botello, the journals of the assembly show there was no session of that body.

4th. That this could not have been a clerical error, by which July 15th was substituted for June 15th, is shown by the record of the proceedings of June 15th, signed by Botello himself.

The record shows that on the 15th June the assembly was in session—that it transacted various business—that no proceedings with reference to this grant were had, and that "there being no other business, the assembly adjourned."

It thus appears that not only is there no archive evidence whatsoever of the existence of this grant, but that those records afford positive proof that a part at least of the alleged proceedings with regard to it could not have been had;

96 under the rulings of the Supreme Court, this objection alone would be an unsuperable obstacle to the confirmation of the claim.—(U. S. *vs.* Luco, 23 How., 543; U. S. *vs.* Castro, 24 How., 346.)

There are other objections which are equally fatal.

1. The signatures of Pico are in his later style, differing essentially from all the signatures (with 3 exceptions) which appear on the very numerous documents signed by him during his official career.

2. There seems to have no possession or occupation of the land, nor any evidence that the existence of the grant was known or suspected, until subsequently to the American occupation.

3. Andres Pico had in connexion with his brother already obtained a grant for 20 leagues. Neither could, therefor, under the colonization laws, have received a grant for more than one additional league.

4. The grant was made, if at all, in June, about a month previous to the capture of Monterey. It was made without informes—and apparently without taking any of the steps required by the colonization laws. It had never

97 been acted on, up to the conquest of the country—nor, so far as appears, had the land been even visited by the grantee; supposing the grant to be genuine, it was evidently not made in the just exercise of the governor's power, or with any idea of carrying out the policy of the colonization laws.

In the language of the Supreme Court: "Besides the suspicious character of the grant, it appears to be wholly destitute of merit."

The claim must be rejected.

Decree rejecting claim.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the fourth day of June, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES, *v.* ANDRES PICO. } No. 184.

This cause having been remanded for further evidence, as appears by
98 the mandate of the Supreme Court of the United States, filed June 12, 1861, and such further evidence having been duly taken, now, therefore, the said cause having been regularly brought to a hearing, counsel for the respective parties having been heard, and due deliberation had in the premises, it is ordered, adjudged, and decreed, that the claim of the said Andres Pico is not valid; that the said claim be, and hereby is, rejected, and that the petition of the said claimant for a confirmation of his said claim be, and the same hereby is, denied.

OGDEN HOFFMAN, *District Judge.*

Endorsed: Filed June 4, 1862.

W. H. CHEVERS, *Clerk.*

Order granting appeal in behalf of claimant.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the 15th day of October, in the year of our Lord one thousand eight hundred and sixty-two.

99 Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES, *vs* ANDRES PICO. } No. 184.—"Moquelumnes."

And now, at this day, on application of J. B. Crockett, esq., of counsel for the claimant, it is ordered by the court that an appeal, in behalf of the claimant herein, from the final decision of this court rendered in said cause at the present term, be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay, and it is further ordered that the said claimant give security, for the costs of said appeal, in the sum of two hundred dollars.

OGDEN HOFFMAN, *District Judge.*

Endorsed: Filed October 15, 1862.

W. H. CHEVERS, *Clerk.*

Appeal Bond.

100 District court of the United States, northern district of California.

THE UNITED STATES, appellee, *vs.* ANDRES PICO, appellant } D. C. 184.—L. C. 357.

Know all men by these presents that we, E. C. Spalding and James Buckley, of the State of California, are held and firmly bound to the above-named

United States in the sum of two hundred (200) dollars to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated the 15th day of October, A. D. 1862.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the district of Columbia, to reverse the decree rendered in the above suit by the district
101 court of the United States for the northern district of California, now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void, otherwise to remain in full force and virtue.

EDW'D C. SPALDING. [SEAL.]
JAMES BUCKLEY. [SEAL.]

Signed, sealed, and delivered, in presence of—
W. H. CHEVERS.

UNITED STATES OF AMERICA,
Northern District of California.

E. C. Spalding and James Buckley, parties to the above bond, being duly sworn, do depose and say, each for himself, that he is worth the sum of four hundred (400) dollars over and above all his just debts and liabilities.

EDW'D C. SPALDING.
JAMES BUCKLEY.

Sworn to and subscribed October 15th, 1862, before me,
W. H. CHEVERS, *U. S. Com.*

102 I hereby approve of the sufficiency of the foregoing bond.

OGDEN HOFFMAN,
U. S. Dist. Judge Nor. Dist. of Cal'a.

SAN FRANCISCO, *October* 15, 1862.

Endorsed: Filed Oct. 15, 1862.

W. H. CHEVERS, *Clerk.*

103 *Translation of Exhibit No. 1, filed by United States, and stipulation.*

SIR PREFECT OF THE 2D DISTRICT: Pio Pico and Andres Pico, residents of the municipality of San Diego, with due respect, and as best may be consistent with law, appear before you saying: that the government of this department having granted us the lands which comprise the Rancho de Tomecula, which belonged to the mission of San Louis Rey, that we might repair thither with our stock, which is of a sufficient quantity, we had the provisional possession of the grant in the month of October next ensuing. From this time until date, and even when the juridical proceedings were going on, we have remarked that the Indians of that establishment oppose our stability in the mentioned location, alleging reasons which, though void of sufficient merits to consider them, nevertheless make impressions on account of the risk in which from hence remain our interests emanating from the aversion indicated. It seems that these same people would remain more resigned and in a degree satisfied with being left for their benefit the rancho or land of Tomecula, opening to them the treaty by which to make a barter of those for those of Santa Margarita, compromising ourselves to indemnify them for the improvements, which consist in a
104 vineyard, in a middling state, the value of which being estimated by appraisers, we shall pay immediately with black cattle, or beasts of burthen, as best may suit the establishment and running appraisements. This

proposition, which may be made to them in proper terms, putting them in mind of the good results which thereby must fall to them, will calm the spirit of uneasiness which is perceived amongst them by the loss of Tomecula; and our persons, families, and interests will be secured in a way more lasting and beneficent on both sides. The superintendant of San Louis Rey will give his report with his customary impartiality, and we have no doubt that therein he will make obvious that in Santa Margarita there is no other stock than that of ours, and that there will not result any incumbrance to the establishment by this contract.

These circumstances, and that of having been in provisional possession of the little location of San Onofre since the month of March, 1836, as will be verified by the documents which are duly accompanying under the numeral bordering upon that of Santa Margarita, in which place part of our cattle has been maintained until this date, has induced us to petition the excellent governor, through the medium of the prefecture, to be pleased to grant us permission to put in execution the proposed exchange. including consequently
105 the respective sketch, which at the same time will be deposited, of the land of San Onofre, under the restrictions and other circumstances that to his excellency shall appear convenient, as well as obliging us to receive the payment for the vineyard in a sum as large as shall be demanded of us, and in the terms indicated.

On account of the foregoing, we ask and pray you to be pleased to cause the corresponding proceedings to be taken upon this our solicitation, and report upon it as you shall think just, for which favor we shall remain obliged to you.

(Signed) PIO PICO.
ANDRES PICO.

August, February 22d, 1841.

MONTEREY, *10th of May*, 1841.

Having seen the petition with which this expediente commences, the report of the prefecture of the 2d district, the valuation made on the landed property existing on the location of Santa Margarita, the will explicitly manifested by the natives of San Louis Rey, with what else presented itself and was to the purpose, in conformity with the laws and regulations on the subject, Messrs. Pio and Andres Pico are hereby declared owners, in their own right, of the locations known by the name of San Onofre and Santa Margarita, bordering to the north on the point called el Ballecita and la Tenaja; to the west on the point of
106 San Mateo; to the south on the bounderies of the pueblo de Los Flores and el Morro; and to the east on the land of the cajon, according to what is shown in the sketch annexed to this expediente, and under the conditions that the interested parties satisfy the establishment of San Luis Rey for the sum of 3,300 dollars for the landed property, which was valued in San Margarita, subject to the approbation of the excellent departmental assembly, and to the conditions which this shall stipulate. Let the corresponding document be issued and entered in the respective book for due attestation. Don Juan B. Alvarado, constitutional governor of the department of both Californias, thus did order, decree, and sign, of which I give testimony.

ANGELES, *July 11th*, 1845.

In this day's session the excellent assembly approved of the proposition in the foregoing opinion, ordering that the espediente be transmitted to the excellent governor for the purposes that may be convenient.

(Signed) PIO PICO, *President.*
AUGUSTIN OLVERA, *Secretary.*

107 SAN FRANCISCO, *Nov.* 4, 1862.

It is hereby stipulated and agreed that the foregoing is a correct translation of Exhibit U. S. No. 1, filed by the U. S. March 31, 1862, and that this translation may be filed in the cause as of that day.

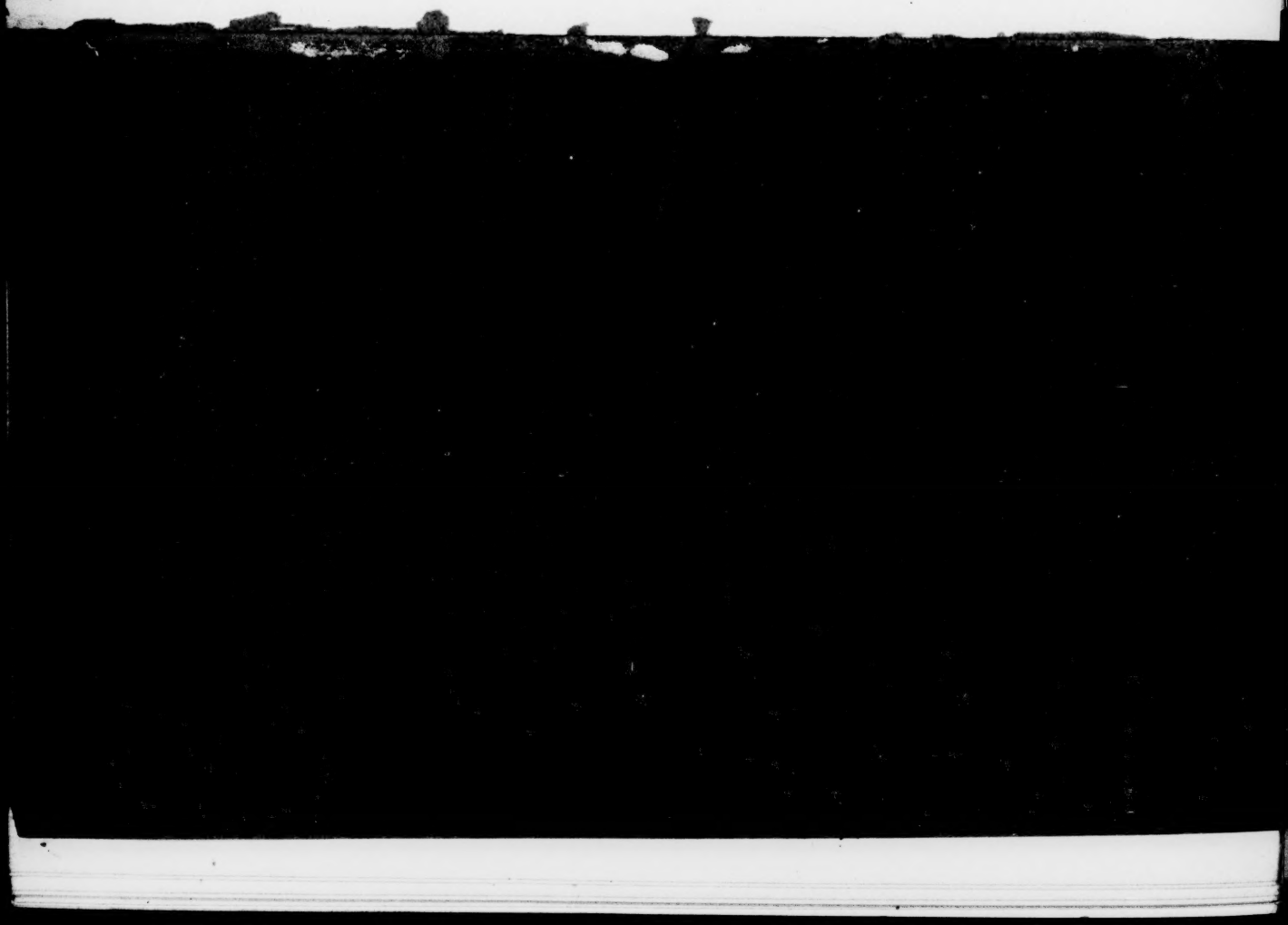
EDWARD STANLEY,
Att'y for Claimant.

108 I, W. H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed and foregoing pages, numbered from one to one hundred and seven, both inclusive, contain a full, true, and correct transcript of the record from the board of United States land commissioners, and of the pleadings, depositions, opinions, orders, and decrees filed in this office in case of Andres Pico, appellant, against The United States, appellees.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this fourth day of November, A. D. one thousand eight hundred and sixty-two, and of the independence of the U. S. of America the eighty-seventh. [SEAL.]

W. H. CHEVERS, *Clerk.*

Filed 24th February, 1863.



1839

Supreme Court of the United States.

DECEMBER TERM, 1864.

No. 119.

ANDRES PICO, APPELLANT, *vs.* THE UNITED STATES.

BRIEF FOR APPELLANT.

A California Land Case.

The facts are as follows:

1. There was a grant for eleven leagues on the Moquelomes river, dated the 6th of June, 1846, signed by Pio Pico, as Constitutional Governor, and by Jose Marias Moreno, Secretary, whose signatures are proved to be genuine. R. p. 3, 4; Ev. of Den., R. p. 2; Pico's R. p. 14; Hopkins, R. p. 27.
2. The grant was approved by Departmental Assembly 15th June, 1846. R. p. 6; Hopkins, R. p. 27; Den. Ev., R. p. 2; Pico's Ev., 17.
3. The grant could be located from the description. Webber's Ev., R. p. 9.
4. Indian hostilities prevented the early settlement of the grant and giving judicial possession. Webber's Ev., R. 9, 10.
5. Appellant claimed the grant and made improvements upon it. Webber's Ev., R. p. 10; Murphy's Ev., R. p. 11.

On the former hearing of this case, it was objected that there was no proof by Pio Pico of the genuineness of his signature to the grant, or a certificate of confirmation, or that they were signed at the time they bear date. This evidence is now supplied.

A confirmation is claimed upon the ground that the evidence necessary to prove title has been produced and remains uncontradicted. See argument 22 Howard, 411.

R. H. GILLET,
Of Counsel for Appellant.

January 17, 1865.

In the Supreme Court of the United States.

DECEMBER TERM, 1864.

No. 119.

ANDES PICO, Appellant,
vs.
THE UNITED STATES, Appellee.

Appeal from the district court for the northern district of California.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

JAMES SPEED,
Attorney General.
TITIAN J. COFFEY,
Special Counsel for United States.

1864

IN THE SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1864.

No. 119.

ANDES PICO, Appellant,
vs.
THE UNITED STATES, Appellee.

Appeal from the district court for the northern district of California.

ARGUMENT FOR THE UNITED STATES.

Without reference to antecedent authorities, this case is ruled by the doctrine declared by this court, in the case of Ellen E. White *vs.* The United States, at the last term. (1 Wallace's U. S. C. R., p. 684. This summary of the law, in regard to this class of cases, is there given:

"It has been held by this court, in a long and unbroken line of adjudications, that where there is no archive evidence, and its absence is unaccounted for, and there has been no such possession as raises an equity in behalf of the party, and especially when, in addition, the expediente produced is tainted with suspicions of fraud, the claim must be rejected."

This claim, when tested by that rule, must be rejected. The record shows the following state of facts:

I.

There is no expediente of this grant, either in the private custody of the grantee or in the Mexican archives, and no reference to it in any of the indexes of Mexican grants. (Printed Record, pp. 3, 4; Hopkins's testimony, *ib.*, p. 27.

There is no evidence that a single step required by the colonization laws was complied with, either by the claimant or

by the governor, prior to the pretended grant in this case. There is no petition, no map, no reference to the local authority for information, no informe, no preliminary decree of concession, no copy of the grant. These facts are the more remarkable as they occur in a grant purporting to have been made by the governor to his own brother.

II.

The grant is produced from the private custody of the grantee, and is authenticated only by proof of the genuiness of the signature of the governor, and by the production of two pretended certificates of the approval of the grant, one coming from the private possession of the grantee, and the other from the Mexican archives of California.

1. *As to the genuiness of the signatures.* That is not disputed. The only question is: *When* were they made?

The governor, Pio Pico, was examined as a witness to prove his signatures to the grant and to one of the certificates of approval by the departmental assembly; but, on cross-examination, he admitted he had *no independent* memory of *their dates:* he only knew the dates from looking at the papers. (Pio Pico's testimony, Printed Record, pp. 17, 18; quest. and ans., 43—49.) He failed, therefore, to prove *satisfactorily* that they were made *when* they purport to have been made. Besides, there is a *peculiarity* in the signatures which identifies them *in point of time* with other signatures of Pio Pico in several cases of fraudulent and rejected grants. *Noscitur a sociis.* (See Hopkins's testimony, Printed Record, pp. 26, 27; United States *vs.* Pico, *et al.*, 23 Howard, U. S. R., p. 324, &c.)

2. *As to the two certificates of approval.* These two certificates *contradict* each other as to the *date* of the pretended approval of the grant by the departmental assembly; or they show this incredible fact, that the grant was approved *twice* by the same body within one month; while the journal of the assembly shows that both of them are false in fact, and that no such approval was ever given. The first certificate of approval is dated June 15, 1846. (Printed Record, p. 6.)

But the journal of the departmental assembly of that date, kept and signed by *Narciso Botello,* after enumerating the busi-

ness transacted, (of which the approval of this grant formed no part,) expressly says: "There being *no other business*, the session was adjourned." (See the Journal of that date; Printed Record, p. 25.)

The second certificate of approval is dated July 16, 1846, and is signed by Narciso Botello. (Printed Record, p. 5.)

But the journal of the departmental assembly—itself a veritable part of the Mexican archives—shows that no session of the assembly was held on that day, and that Narciso Botello did not act as secretary of that body after July 7, 1846. The only sessions after that date were held July 8th and July 24th, 1846, on both of which occasions Augustin Olvera acted and signed the journal as secretary. (See journal of those dates.)

Thus it appears that the only vestige of archive evidence in support of this grant, is, like the grant itself, *fabricated*, and that it must have been surreptitiously interpolated among the archives in order to give some show of genuineness to an *ex post facto* grant, made after the overthrow of the Mexican authority in California.

III.

There was no accompanying possession taken under the grant. No possession whatever was taken, and the grant was never heard of for more than two years after the date of the pretended grant, and then not until after the cession of California to the United States.

The grant purports to have been made June 6, 1846, (Printed Record, p. 4.) Yet it is proved by Webber, a coterminous grantee, and one of the claimant's own witnesses, that he never heard of the grant before "the fall of 1848;" that no possession was taken of the land by the grantee, or any one in his behalf, until after that time; but that, in fact, he (the witness) had had possession of the land previously, and had made improvements, which he then gave to the claimant. Webber's testimony. (Printed Record, p. 10.)

IV.

This grant for 11 leagues, even if genuine, is illegal, be-

cause by the colonization law, no one was allowed to receive a grant for more than eleven leagues; and Pio Pico and the claimant in this case had already received a grant for the ranchos San Onofre and Santa Margarita, containing twenty leagues. (Printed Record, pp. 31, 32, *ib.*, p. 29.)

This claim must, therefore, be rejected as illegal, fraudulent, and void.

JAMES SPEED,
Attorney General.
JOHN A. WILLS,
Special Counsel for United States.